never be operative unless actually assented to by the debtor, since the creditor would have no right to impose terms on his acceptance.

The principle of presumed assent finds full scope in the case where neither party has at any time communicated his intention; then that application is presumed to have been agreed upon to which it is most probable that the parties would have assented.[13] Here certain rules of presumption have grown up, such as that the earliest items in a running account,[14] or the most precariously secured debts,[15] or the debts not yet barred,[16] shall be preferred; but these presumptions should be rebuttable.[17] For the essential distinction between the so-called common law and civil law rules is not that the one favors the creditor, the other the debtor, but that the civil law and other codes[18] provide fixed rules of application, whereas at common law the application of a payment depends upon the agreement of the parties, actual or presumed. It follows that, strictly speaking, the court itself never applies a payment, but in all cases merely construes the acts of the parties.

APPROPRIATIONS TO REIMBURSE MUNICIPAL OFFICERS FOR EXPENSES INCURRED IN LITIGATION. — An appropriation to reimburse certain town officers who had made an arrest for the supposed violation of a local liquor law for their expenditures in a suit against them for false imprisonment, by which they were compelled to pay damages, was upheld in a recent Massachusetts case. *Leonard* v. *Inhabitants of Middleborough*, 84 N. E. 323. This reimbursement of municipal officers for expenses incurred in the supposed discharge of their duties may involve two considerations; for the validity of the expenditure of public money by a town or a city may be attacked on the ground that it is not within the corporate powers of the town or city as granted by the legislature,[1] or on the ground that it is not for a public purpose.[2]

The authorities are clear that it is within the power of a municipality to reimburse its officers for expenses incurred in litigation occasioned by lawful acts done in the course of duty.[3] But the courts go further, and, as in the present case, sustain appropriations where the officers have committed a tort or other illegal act.[4] Apparently the only limitations on this doctrine are that the officer must have incurred the liability while acting in good faith,[5] and that the municipality must have a direct interest in the discharge of the particular duty.[6] The courts adopt the theory that since a municipality may expend money for its own defense, it may make appropriations for its agent's defense,[7] when the agent incurs a liability while acting for the

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[13] The Martha, 29 Fed. 708.
[14] Clayton's Case, 1 Meriv. 585.
[15] Field *v.* Holland, 6 Cranch (U. S.) 8. *Contra*, Pond *v.* Harwood, 139 N. Y. 111. *Cf.* The Mecca, [1897] A. C. 286.
[16] Estes *v.* Fry, 166 Mo. 70. *Contra*, Indian Contract Act, § 61.
[17] The Mecca, *supra*.
[18] Cal. Civ. Code, § 1479; Ga. Civ. Code, § 3722.

[1] Bloomfield *v.* Charter Oak Bank, 121 U. S. 121.
[2] Loan Ass'n *v.* Topeka, 20 Wall. (U. S.) 655. See 21 HARV. L. REV. 277.
[3] Fuller *v.* Groton, 11 Gray (Mass.) 340.
[4] Moorhead *v.* Murphy, 94 Minn. 123.
[5] Cullen *v.* Carthage, 103 Ind. 196.
[6] Vincent *v.* Inhab's of Nantucket, 12 Cush. (Mass.) 103.
[7] Sherman *v.* Carr, 8 R. I. 431.

municipality.[8] But this theory merely indicates a method by which the municipality as principal may reimburse its agent if it is directly liable for his torts. And inasmuch as these cases of reimbursement arise only when the municipality is not directly liable, the appropriations can be supported only by regarding the municipality as capable of discharging certain moral obligations.[9] On principle, it is submitted that such a power is not within the strict construction of municipal charters universally demanded by the courts.[10]

The further question, whether or not these reimbursements serve a public purpose by making officers more efficient in the performance of their duties, is usually overlooked by the courts. It may be argued that personal liability for all unauthorized acts will result in such an excess of caution on the part of public officials as to interfere with the proper performance of their duties. On the other hand, reimbursement may cause wasteful carelessness. But ordinarily the courts refuse to declare appropriations public when the immediate purpose is the promotion of individual interest, even though the public welfare is ultimately furthered.[11] Accordingly, reimbursement would seem to be in its nature a gratuity and within the limitation.[12] On this ground the courts have declared invalid a statute authorizing municipal officers to obtain reimbursement for successfully defending suits brought to remove them from office.[13] Such cases may be distinguished in that suits to remove from office are brought for criminal misconduct in office and are in their nature penal. But the underlying principle is the same whether the reimbursement is for a civil or criminal prosecution. However, since courts hesitate to interfere with municipal appropriations and will go far to find a public purpose, and in view of the authorities supporting appropriations for reimbursement, though the validity of the purpose was not questioned, it is unlikely that in future such appropriations, at least in civil cases, will be declared invalid.

RECENT CASES.

BILLS AND NOTES — CHECKS — ACCEPTANCE BY RETENTION OF CHECK BY DRAWEE. — The Negotiable Instruments Law of Pennsylvania provides that where a drawee to whom a bill is delivered for acceptance destroys it or refuses to return it within twenty-four hours or such other period as the holder may allow, he will be deemed to have accepted it. The plaintiff presented certain checks to the defendant bank, which retained possession of them for several days. There was no express demand by the plaintiff, nor refusal by the bank. *Held*, that the defendant is liable as acceptor. *Wisner* v. *First Nat'l Bank*, 68 Atl. 955 (Pa.).

A drawee ordinarily has twenty-four hours in which to examine the state of his accounts before he need act in any way. See *Bellasis* v. *Hester*, 1 Ld. Raym. 280, 281. The mere retention beyond that time of a check or bill of exchange offered for acceptance was not, under the law merchant, enough to constitute a

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[8] Babbitt *v.* Selectmen of Savoy, 3 Cush. (Mass.) 530.
[9] Trustees of Exempt Firemen's Fund *v.* Roome, 93 N. Y. 313.
[10] Stetson *v.* Kempton, 13 Mass. 271.
[11] Lowell *v.* Boston, 111 Mass. 454.
[12] Mount *v.* State, 90 Ind. 29.
[13] Matter of Chapman *v.* City of New York, 168 N. Y. 80. *Contra*, Laurence *v.* McAlvin, 109 Mass. 311; Hixon *v.* Sharon, 190 Mass. 347.